

## **PART 849—TERMINATION OF CONTRACTS**

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**SUBPART 849.1 - GENERAL PRINCIPLES**

**849.106 Fraud or other criminal conduct.**

When the circumstances set forth in FAR 49.106 are encountered, the contracting officer will immediately discontinue all negotiations. The contracting officer will submit all of the pertinent facts necessary to support his/her reasoning to the Deputy Assistant Secretary for Acquisition and Materiel Management (95), (or the Chief Facilities Management Officer, in the case of contracting officers from the Office of Facilities Management). The Deputy Assistant Secretary for Acquisition and Materiel Management (95) or the Chief Facilities Management Officer, Office of Facilities Management, will review the submission and fully develop the facts. If the evidence indicates fraud or other criminal conduct, the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer, Office of Facilities Management, will forward the submission with his/her recommendations, through channels (to include the General Counsel, if appropriate), to the Inspector General (51) for referral to the Department of Justice. The contracting officer will be advised by the Deputy Assistant Secretary for Acquisition and Materiel Management or the Chief Facilities Management Officer, Office of Facilities Management, as to any further action to be taken. Pending receipt of this advice, the matter will not be discussed with the contractor. No collection, recovery or other settlement action will be initiated while the matter is in the hands of the Department of Justice without first obtaining the concurrence of the U.S. Attorney concerned, through the Inspector General. If inquiry is made by the contractor, he/she will be advised only that the proposal has been forwarded to higher authority.

**849.107 Audit of prime contract settlement proposals and subcontract settlements.**

Contracting officers will submit settlement proposals for review and audit prior to taking any further action, in accordance with the provisions and claim limitations applicable to prime and subcontractors as set forth in FAR 49.107. Contracting officers in the Office of Acquisition and Materiel Management and the Office of Facilities Management who are located in the VA Central Office have the option to request audits directly from the cognizant audit agencies or to request audits through the Assistant Inspector General, Office of Departmental Reviews and Management Support (53C). All other contracting officers located in the VA Central Office and the Office of the General Counsel will send requests for audit

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to the Assistant Inspector General, Office of Departmental Reviews and Management Support (53C), to request audits directly from the cognizant audit agencies. Audit control numbers may be obtained verbally from the Deputy Assistant Secretary for Acquisition and Materiel Management (95).

**849.111 Review and approval of proposed settlements.**

**849.111-70 Settlement review boards.**

The Deputy Assistant Secretary for Acquisition and Materiel Management and the Chief Facilities Management Officer will each establish within his/her own organization a settlement review board. The board may be established on a permanent or temporary basis. More than one such board may be established if settlements are to be made at different locations, if personnel with different qualifications are needed for different contracts, or if for other reasons, the establishment of more than one review board is considered desirable. Each settlement review board should be composed of at least three qualified and disinterested employees. The membership of each board should include at least one lawyer and one accountant.

**849.111-71 Required review and approval.**

Prior to executing a settlement agreement, or issuing a determination of the amount due under the termination clause of a contract, or approving or ratifying a subcontract settlement, the contracting officer shall submit each such settlement or determination for review and approval by a settlement review board if:

- (a) The amount of settlement, by agreement or determination, involves \$50,000 or more; or
- (b) The settlement or determination is limited to adjustment of the fee of a cost-reimbursement contract or subcontract, and:
  - (1) In the case of a complete termination, the fee, as adjusted, is \$50,000 or more; or
  - (2) In the case of a partial termination, the fee, as adjusted, with respect to the terminated portion of the contract or subcontract is \$50,000 or more; or

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- (c) The head of the contracting activity concerned determines that a review of a specific case or class of cases is desirable; or
- (d) The contracting officer, in his/her discretion, desires review by the settlement review board.

**849.111-72 Submission of information.**

(a) The contracting officer shall submit to the appropriate settlement review board a statement of the proposed settlement agreement or determination, supported by such detailed information as is required for an adequate review. This information should normally include copies of:

- (1) The contractors or subcontractors settlement proposal.
- (2) The audit report.
- (3) The property disposed report and any required approvals in connection therewith,
- (4) The contracting officer's memorandum explaining the settlement, and
- (5) Any other relevant material that will assist the board in arriving at a decision to approve or disapprove the proposal. The board may, in its discretion, require the submission of additional information.

(b) When a review of a proposed settlement is required and the contract covers supplies, equipment or services, other than construction chargeable to Construction Appropriations, the contracting officer will submit the proposed settlement or determination to the settlement review board through the Deputy Assistant Secretary for Acquisition and Materiel Management.

(c) When the contract covers construction chargeable to Construction Appropriations and review is required, the proposed settlement or determination will be submitted by the contracting officer to the settlement review board through the Chief Facilities Management Officer.

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**SUBPART 849.4 - TERMINATION FOR DEFAULT**

**849.402 Termination of fixed-price contracts for default.**

**849.402-6 Repurchase against contractor's account.**

(a) VA Form 90-2237, Request, Turn-in, and Receipt for Property or Services, or the file copy of the purchase order covering the purchase of supplies, equipment, or services against a defaulting contractor shall be annotated to show the name of the defaulted contractor, the contract number, the contract price, the name of the contractor from whom procurement is made, the price paid, the competition secured and the difference in cost, if any, to the Department of Veterans Affairs. When repurchase results in the payment of excess costs and the purchase is made through the Supply Fund, the excess cost, when collected, shall be deposited to the credit of the Supply Fund. In all other instances, the excess costs, when collected, shall be deposited to General Fund Receipts.

(b) Contracting officers, when purchasing against a defaulted contractor, shall procure the items in a manner that will protect the interests of the contractor as well as those of the Government.